

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02367-BNB

WILLIAM ALLEN MILLER,  
Plaintiff,

v.

H. J. MARBERRY, (Warden),  
ROGERS, (Correctional Officer), and  
HADDIX, (Nurse),  
Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

**OCT 03 2011**

**GREGORY C. LANGHAM**  
CLERK

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ORDER TRANSFERRING CASE

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Plaintiff, William Allen Miller, is a prisoner in the custody of the United States Bureau of Prisons at the United States Penitentiary at Florence, Colorado. Mr. Miller has filed *pro se* a Prisoner Complaint alleging that his rights under the United States Constitution were violated while he was incarcerated at the United States Penitentiary at Terre Haute, Indiana ("USP Terre Haute"). Mr. Miller alleges that all of the named Defendants are prison officials at USP Terre Haute.

The Court must construe the Prisoner Complaint liberally because Mr. Miller is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). Construing the Prisoner Complaint liberally, it is apparent that the Court lacks personal jurisdiction over the named Defendants and that venue is not proper in the District of Colorado.

"A court may *sua sponte* cure jurisdictional and venue defects by transferring a suit under the federal transfer statutes, 28 U.S.C. §§ 1406(a) and 1631, when it is in the

interest of justice.” *Trujillo v. Williams*, 465 F.3d 1210, 1222 (10<sup>th</sup> Cir. 2006).

Pursuant to § 1406(a), “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”

Pursuant to § 1631, if the Court “finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed.”

As noted above, Mr. Miller claims his constitutional rights were violated while he was incarcerated at USP Terre Haute, and he alleges the named Defendants are prison officials at USP Terre Haute. Therefore, the Court finds that this action could, and should, have been brought in the United States District Court for the Southern District of Indiana, the judicial district in which USP Terre Haute is located. **See** 28 U.S.C. § 94(b). The Court also finds that it would be in the interest of justice to transfer this case to the Southern District of Indiana rather than to dismiss it. Accordingly, it is

ORDERED that the clerk of the Court transfer this action to the United States District Court for the Southern District of Indiana pursuant to 28 U.S.C. §§ 1406(a) and 1631.

DATED at Denver, Colorado, this 3<sup>rd</sup> day of October, 2011.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

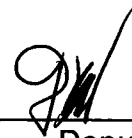
Civil Action No. 11-cv-02367-BNB

William Allen Miller  
Reg. No. 77436-012  
USP Florence - High  
PO Box 7000  
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on October 3, 2011.

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'G. Langham', written over a horizontal line.

Deputy Clerk